

Exhibit D

In the Matter Of:

USA vs

US SUGAR CORPORATION

JOHN YONOVER

February 24, 2022



1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF DELAWARE

3 -----X

4 UNITED STATES OF AMERICA, :

5 Plaintiff :

6 v. :

7 UNITED STATES SUGAR : Civil Action No.:

8 CORPORATION, UNITED SUGAR: 1:21-cv-01644-MN

9 CORPORATION, IMPERIAL SUGAR:

10 COMPANY, and LOUIS DREYFUS:

11 COMPANY LLC. :

12 Defendants. :

13 -----X

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15 HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL ONLY

16 REMOTE STENOGRAPHIC DEPOSITION OF JOHN YONOVER

17 Thursday, February 24, 2022

18 1:35 p.m.

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22 Job No.: 832871

23 Pages: 1 - 100

24 STENOGRAPHICALLY REPORTED BY:

25 GISELLE MITCHELL-MARGERUM, RPR, CRI, CCR, LCR, CSR

1 Deposition of JOHN YONOVER, held remotely,
2 via videoconference at:

5 | VIA VIDEOCONFERENCE

9 Pursuant to agreement, before Giselle
10 Mitchell-Margerum, Registered Professional Reporter,
11 Certified Reporting Instructor, Licensed Court Reporter
12 (TN), Certified Court Reporter (GA), Certified Court
13 Reporter (NJ), Certified Court Reporter (WA), Certified
14 Shorthand Reporter (OR), Certified Shorthand Reporter
15 (CA), and Notary Public (Washington, D.C.).

3

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3 OF JUSTICE:

4 US DEPARTMENT OF JUSTICE, ANTITRUST

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1 ALSO PRESENT:

2 MICHAEL BRATKOWSKI, Videographer

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1 E X H I B I T I N D E X

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3 No. Description Page

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5 Exhibit 1 INDSUG00002 57

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7 Exhibit 2 INDSUG00001 57

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9 Exhibit 3 INDSUG00003 57

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1 | P R O C E E D I N G S

2 THE VIDEOGRAPHER: Good
3 afternoon. We are on the record at
4 1:35 p.m. Eastern Time, on
5 February 24th 2022.

6 Here begins the videotaped
7 deposition of John Yonover, in the matter
8 of United States of America v. United
9 States Sugar Corporation, et al. Filed
10 in the United States District Court, for
11 the District of Delaware.

12 Civil action number is
13 1:21-cv-01644-MN. Today's video
14 deposition is taking place via video web
15 conference, with other participants
16 attending remotely.

17 My name is Michael Bratkowski. A
18 videographer from Lexistas Legal
19 Solutions. Would counsel on the call
20 please identify yourselves and state whom
21 you represent?

22 MS. SINKLER: Hi. This is
23 Chinita Sinkler, with the United States
24 Department of Justice. Joined by
25 colleagues, Jessica Taticchi, Alena

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1 Maiolo, and Fan Zhang.

2 MS. GIORDANO: Jennifer
3 Giordano, from Latham & Watkins, on
4 behalf of the defendant, United States
5 Sugar Corporation. And with me today,
6 also from Latham, are Christine Greeley
7 and Molly Barron.

8 MS. CANDELARIA: Hello. Serena
9 Candelaria, from Cravath, Swaine & Moore,
10 on behalf of Imperial Sugar.

11 MR. GILES: This is Nicholas
12 Giles, of McGuireWoods, on behalf of the
13 witness, Mr. Yonover, and Indiana Sugars.

14 MS. WAIT: And this is Amanda
15 Wait, Norton Rose Fulbright, on behalf of
16 Imperial Sugar Company and Louis Dreyfus
17 Company.

18 THE VIDEOGRAPHER: Okay. Thank
19 you. Our court reporter today is
20 Giselle Mitchell, with Lexistas Legal
21 Solutions. Would you please swear in?

22 THE COURT REPORTER: Yes.
23 Mr. Yonover, please raise your right
24 hand.

25 Do you swear to tell the truth, the

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1 whole truth, and nothing but the truth?

2 THE WITNESS: I do.

3 THE COURT REPORTER: Okay. We

4 can start.

5 JOHN YONOVER

6 Having been duly sworn testified as follows:

7 EXAMINATION BY MS. SINKLER:

8 Q. Thank you. Good afternoon again,

9 Mr. Yonover.

10 A. Good afternoon.

11 Q. Would you state your full name for
12 the record, please?

13 A. John Benjamin Yonover.

14 Q. And, Mr. Yonover, have you ever been
15 deposed before?

16 A. I have.

17 Q. So, I'll just briefly go over the
18 procedure for today. Basically, since you've
19 been deposed before, you know, I'm going to
20 ask you a series of questions and the court
21 reporter is going to record my questions and
22 your answers.

23 So, it's important that you
24 wait until I finish my question before you
25 answer. Okay?

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1 certain suppliers aren't -- aren't selling.
2 They may have a bad crop or they may have
3 labor problems or they may have already sold
4 what they wanted to sell. Hence the -- the
5 variances between years.

6 Every year is different.

7 Q. Okay. Looking at Exhibit 1, we see
8 that Indiana Sugars' top supplier for the last
9 [REDACTED]. Is that right?

10 A. Yes. That's correct.

11 Q. And who is Indiana Sugars' number
12 two supplier in two of the last three years?

13 A. [REDACTED].

14 Q. [REDACTED] was number three in
15 2020? Is that right?

16 A. Yep.

17 Q. It flipped to the third place when
18 imports took over number two?

19 A. Yeah. That's exactly right.

20 Q. Okay. And by the way, I should be
21 very clear that the category called "Offshore
22 Supply Chain," that's the import category.
23 Right?

24 A. That is correct.

25 Q. Okay. And that can be many numbers

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1 of importers?

2 A. Yes. Many different origins.

3 Q. Okay. Are you aware that Cargill
4 has announced an expansion plan at its
5 facility in Gramercy, Louisiana?

6 A. I am aware.

7 Q. And are you aware that that
8 expansion plan could increase the capacity at
9 that Louisiana facility by as much as 50
10 percent?

11 MS. SINKLER: Objection. Calls
12 for speculation.

13 THE WITNESS: What do I do?

14 MR. GILES: You can answer.

15 MS. GIORDANO: You can answer
16 if you know. I'm just asking what you're
17 aware of.

18 THE WITNESS: I'm supposed to
19 answer that question?

20 MS. GIORDANO: If you know.

21 Yeah.

22 THE WITNESS: Yes. I am aware
23 of that.

24 MS. GIORDANO: Okay.

25 BY MS. GIORDANO:

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1 Q. Would you consider that to be a
2 pretty significant expansion for a refiner
3 like LSR in Gramercy?

4 MS. SINKLER: Objection.

5 Vague.

6 THE WITNESS: I'm supposed to
7 answer. Right? Yeah. Okay. Sorry.

8 Yes, I think that's a large
9 expansion. Yes.

10 BY MS. GIORDANO:

11 Q. Okay. For Indiana Sugars, what do
12 you expect that expansion to mean for you?

13 A. Potentially, additional supply.

14 Q. How do you think the price of that
15 supply might be available to you, based on the
16 expansion?

17 A. There's many factors there. I don't
18 have an answer for you on that. I believe we
19 would be able to do more business with them.
20 That's my belief.

21 Q. Okay. Do you find -- do you regard
22 that as a good thing for Indiana Sugars?

23 A. I do.

24 Q. In the last five years, [REDACTED]
25 doesn't appear to have been higher than number

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1 five on your list. Is that correct?

2 A. That's correct.

3 Q. And in 2021, [REDACTED] was number
4 six?

5 A. Yes.

6 Q. In 2020, it was seventh?

7 A. Yes.

8 Q. And in -- from 2016 to 2018, they
9 dropped down to eighth or ninth place? Is
10 that right?

11 A. That's correct.

12 Q. And as we discussed, in all of those
13 instances, because there are categories like
14 the offshore imports above [REDACTED] in each
15 year, could [REDACTED] really be like a
16 fifteenth or twentieth supplier to you?

17 MS. SINKLER: Objection.

18 Mischaracterizes testimony.

19 THE WITNESS: Okay. Yes. I'm
20 sorry. I've just got to ask a technical
21 question. If you ask me a question and
22 somebody objects to it, do I still answer
23 the question?

24 MR. GILES: Yes.

25 MS. GIORDANO: Yes.

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1 MR. GILES: Yes. John, the
2 only time that would be different is if I
3 instruct you not to answer.

4 THE WITNESS: Okay.

5 MR. GILES: So, if somebody
6 says an objection, go ahead and answer
7 the question after the objection has been
8 made. The one exception is if I instruct
9 you not to answer.

10 THE WITNESS: Got it. All
11 right. Sorry, guys. I sell sugar for a
12 living. This is not what I do normally.

13 I don't know that 30 is the right
14 number, Ms. Giordano, but it certainly
15 would be a lower number if you count each
16 individual trading company or -- and/or
17 generation seller.

18 BY MS. GIORDANO:

19 Q. Okay. So, for example, in 2021,
20 [REDACTED] was number six on your supplier list.
21 Potentially, how many -- in the real world,
22 what might that number really be if we counted
23 all of the offshore -- import supply chain
24 options?

25 A. I would be speculating, at best.

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1 Q. Okay. Is there more than 10
2 Offshore Supply Chains that you buy from?

3 A. Probably not in any given year.

4 Q. Okay. More than five?

5 A. Yes.

6 Q. Okay. So, in 2021, is it reasonable
7 to think maybe [REDACTED] was as much as number
8 11 on your list?

9 MS. SINKLER: Objection. Asked
10 and answered.

11 A. Reasonable, yes.

12 Q. Okay. And, similarly, for example,
13 in 2020, they were number seven; [REDACTED] was.
14 Right?

15 A. Yes.

16 Q. Okay. So, reasonable to think that
17 they -- that number may actually be as much as
18 12th on your list?

19 A. On that year, it may have been even
20 lower. Because that was the year of the force
21 majeure and there were all kinds of needs to
22 skip supply chain offshore.

23 Q. Okay. And fair to say that Indiana
24 Sugars has a number of supplier options that
25 it chooses to buy from before [REDACTED]?

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1 A. As evidenced by their ranking.

2 Q. Okay. Is it fair to say that
3 Indiana Sugars will sell any suppliers sugar
4 in the United States wherever Indiana Sugars
5 thinks it makes sense to do that?

6 A. Yes.

7 Q. Do you -- does Indiana Sugars always
8 know who it's competing against when it's
9 competing for a customer's business?

10 A. Very rarely do we know exactly who
11 we are competing with?

12 Q. Okay. Does it matter to Indiana
13 Sugars who you're competing against? Do you
14 need to know that?

15 A. Not generally.

16 Q. Okay. Does Indiana Sugars compete
17 as aggressively for any customer it's
18 competing for, regardless of whether its
19 suppliers may also be competing?

20 A. Yes.

21 Q. You testified earlier, I believe,
22 that Indiana Sugars has successfully won
23 business -- potentially, at least, to your
24 knowledge, against your suppliers.

25 Is that right?

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1 they wouldn't want to be a seller at any
2 particular time.

3 Q. And, specifically, with regard to
4 the last part of that, "When they've already
5 sold what they're going to sell."

6 What does that mean?

7 A. They have a finite amount of sugar
8 that they can sell in any given period. And
9 once they sell it, it's gone. They can't make
10 more than what they could make in a 12-month
11 period.

12 Q. And then, just as far as a refiner
13 not wanting to sell, why might a refiner not
14 want to sell?

15 A. Well, that would be a perfect
16 example of not wanting to sell. Because they
17 have already sold out their capacity.

18 Q. Mr. Yonover, how much refined sugar
19 do you buy on an annual basis, nationwide?

20 A. So, you've already asked me that
21 question and I didn't ask it then and I don't
22 want to answer it now. We're a very privately
23 held company and that information is very,
24 very confidential.

25 Q. So, Mr. Yonover, are you being

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1 instructed by your counsel not to answer that
2 question?

3 A. No.

4 MS. SINKLER: So, Mr. Giles, I
5 would just say, as you know, it's not a
6 valid basis not to answer this question.

7 There is a protective order in this case,
8 under which you can designate information
9 as confidential.

10 MR. GILES: Yes.

11 MS. SINKLER: Are you going to
12 instruct the witness to answer the
13 question?

14 MR. GILES: I would instruct
15 the witness to answer the question to the
16 best of his ability. Yes, John.

17 THE WITNESS: So, every year is
18 a little different, and I'm not exactly
19 sure from what our last year was. I have
20 a pretty good idea, but I don't walk
21 around with the specific number.

22 BY MS. SINKLER:

23 Q. Can you give me an estimate?

24 A. For which year?

25 Q. 2021.

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1 A. [REDACTED].

2 Q. And how much of your total refined
3 sugar purchases are from importers?

4 A. I don't know the answer to that
5 question. As I said to you earlier, I don't
6 really track that.

7 Q. And how much refined sugar do you
8 sell on an annual basis, nationwide?

9 A. Well, we buy what we sell. So, if
10 we bought "X," we would have sold the same.

11 Q. So, in 2021, how much refined sugar
12 did you sell on an annual basis, nationwide?

13 A. [REDACTED]

14 [REDACTED].

15 Q. And in which state have you
16 considered building a new facility?

17 A. I really don't want to answer that
18 question. It's proprietary.

19 Q. So, are you being instructed by your
20 counsel not to answer that question?

21 A. No.

22 MS. SINKLER: Mr. Giles, as you
23 know, it's not a valid basis not to
24 answer this question because it's
25 proprietary. There is a protective order

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1 in this case, under which you can
2 designate information as confidential.

3 Will you instruct the witness to
4 answer the question?

5 MR. GILES: Yes. I'll instruct
6 the witness to answer the question to the
7 best of his ability.

8 THE WITNESS: [REDACTED]

9 [REDACTED]
10 MS. SINKLER: I don't think I
11 have any further questions. But I just
12 need to check with my team, so it will
13 literally take me five minutes and I --

14 MS. GIORDANO: Can we not do
15 another five minutes? We have been very
16 patient today. With 45-minute breaks,
17 let's just quickly decide that we can let
18 Mr. Yonover --

19 MS. SINKLER: Excuse me. I
20 don't think we've had 45-minute breaks on
21 my end. I mean, I think we have come
22 back pretty quickly each time, with all
23 due respect.

24 MS. GIORDANO: We just took a
25 45-minute break, probably not less than

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1 eight minutes ago. Could we please just
2 quickly wrap this up?

3 MS. SINKLER: I want to go off
4 the record and take a five-minute break.
5 Thank you.

6 Can we go off the record?

7 THE VIDEOGRAPHER: And,
8 Ms. Giordano, can I go off?

9 MS. GIORDANO: We can go off,
10 It's fine.

11 THE VIDEOGRAPHER: And we are
12 off the record at 4:40 p.m..

13 (Short break.)

14 THE VIDEOGRAPHER: And we are
15 back on the record, 4:43 p.m..

16 MS. SINKLER: Thank you.

17 Thank you, Mr. Yonover. I don't
18 have any further questions for you.

19 Thank you very much for your time.

20 THE WITNESS: Thank you.

21 RE-EXAMINATION BY MS. GIORDANO:

22 Q. Just very briefly, Mr. Yonover, with
23 respect to Exhibit 2, which is the
24 spreadsheet, as you sit here today, do you
25 have any reason to believe that that Exhibit 2

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1 does not accurately reflect Indiana Sugars'
2 sales into the 12 states that DOJ has defined
3 as the South East?

4 MS. SINKLER: Object.

5 A. So, it is unusual to see Arkansas in
6 there, when it's not one of the states. But I
7 imagine there is a rational explanation why
8 that's there. So, I think it is fairly
9 accurate.

10 Q. Thank you. And putting aside
11 Exhibit 2 -- totally unrelated to Exhibit 2,
12 as the President and COO of Indiana Sugars,
13 are you aware whether Indiana Sugars has
14 increased its sales significantly in the 12
15 states that the Department of Justice has
16 identified as the South East over the last
17 five years?

18 MS. SINKLER: Objection.

19 Vague.

20 A. So, again, this is not something I
21 track. So I really don't have an opinion.
22 I'm sorry.

23 Q. Okay. Is it the case, though, that
24 one of the reasons Indiana Sugars is
25 considering building a new facility in

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1 [REDACTED], because it believes it has the
2 ability to sell more sugar into the 12 states
3 that the Department of Justice has identified
4 as the South East?

5 A. That will be --

6 MS. SINKLER: Objection. Form.

7 THE WITNESS: Sorry.

8 MS. SINKLER: I'm sorry. I
9 didn't want to talk over you. I just
10 wanted to get it on the record.

11 Objection. Form.

12 THE WITNESS: That would be one
13 of the reasons.

14 MS. GIORDANO: Thank you. Sir.
15 No further questions. I appreciate your
16 time as well.

17 MR. GILES: Before we go off
18 the record today, I just wanted to say
19 that, you know, we do anticipate
20 designating large portions of this
21 deposition as confidential under the
22 protective order.

23 Under the protective order right
24 now, it's assumed confidential for 21
25 days, which limits this -- you know, this

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1 information to outside counsel only. I
2 know everyone is aware of that. But just
3 wanted to make that clear for the record.

4 And, again, as I've mentioned to
5 counsel for both sides, we do anticipate
6 moving the Court to extend that
7 protection beyond just discovery as well.

8 We'd also like to read and sign, and
9 I'd like a copy of the transcript,
10 please.

11 MS. SINKLER: Thank you,
12 Mr. Giles. We will certainly provide you
13 a copy of the transcript when we receive
14 it and give you an opportunity to review
15 or decline.

16 MR. GILES: Thank you.

17 MS. SINKLER: Thank you.

18 THE VIDEOGRAPHER: And this
19 will conclude the day's proceedings in
20 the deposition of John Yonover. We are
21 off the record at 4:45 p.m. Eastern Time.

22 (Whereupon, the deposition adjourned
23 at 4:45 p.m.)

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1 REPORTER'S CERTIFICATE

2

3 I, GISELLE MITCHELL-MARGERUM, the undersigned,
4 a Registered Professional Reporter, Certified
Reporting Instructor, Licensed Court Reporter, and
Certified Court Reporter, do hereby certify:

5

6 That the witness, JOHN YONOVER, before
examination was remotely duly sworn to testify to
the truth, the whole truth, and nothing but the
7 truth.

8

9 That the foregoing deposition was taken
remotely stenographically by me on Thursday,
February 24, 2022, and thereafter was transcribed
10 by me, and that the deposition is a full, true, and
complete transcript of the testimony, including
questions and answers, and objections, motions and
11 exceptions made by counsel.

12

13 That reading and signing was requested; and
that I am neither attorney nor counsel for, nor
related to or employed by, any of the parties to
the action in which this deposition was taken; and
14 that I have no interest, financial or otherwise, in
this case.

15

16 IN WITNESS WHEREOF, I have hereunto set
my hand this day of 2022.

17

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21 GISELLE MITCHELL-MARGERUM, RPR, CRI, CCR, LCR, CSR

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